



PRELIMINARY DRAFT

No. 3272

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2012 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 6-4.1; IC 12-14-21-3; IC 12-15-9; IC 29-1; IC 29-3-3-7; IC 30-4; IC 32-17-14.

Synopsis: Various estate planning matters. Specifies that an individual holding a beneficial or ownership interest in an entity is considered the transferee when a transferor makes a transfer subject to the inheritance tax to the entity. Provides that the individual is liable for the same percentage of the inheritance tax as the individual's percentage of beneficial or ownership interest in the entity. Provides that reasonable funeral expenses have priority over claims to recover supplemental assistance for the aged and Medicaid from a recipient's estate. (Current law provides that only amounts of \$550 or less have priority over a claim for the recovery of aged assistance and that only amounts of \$350 or less have priority over a claim for the recovery of Medicaid.) Eliminates authority to file a recovery claim against the estate of the recipient's spouse. Specifies that for purposes of the Medicaid recovery statute costs of administration include taxes, penalties, and interest paid by the estate. Eliminates rules of will construction that applied only to decedents dying in 2010. Authorizes foreign wills to be probated after the expiration of the probate deadlines for the same limited purposes that Indiana wills may be probated after the deadlines. Provides that when an estate's resources are insufficient to pay all claims the amount
(Continued next page)

Effective: Upon passage; July 1, 2012.



Digest Continued

given priority for reasonable funeral expenses is not subject to any reductions for various benefits received by the decedent. Provides that costs of administration include the fee of a surrogate attorney for purposes of determining the priority of claims when an estate's resources are insufficient to pay all claims. Eliminates the requirement that a declaration designating a standby guardian include the Social Security number of the child or protected person. Specifies that a standby guardian has all of the powers granted by the guardianship statute. Provides that amendments to the trust code apply to trusts created prior to the effective date of the amendment unless certain adverse events would occur because of the application of the amendment. Provides that amendments to the transfer on death (TOD) statute apply to TOD transfers created before the effective date of the amendment. Specifies that a testamentary trust receiving a TOD transfer is considered to have been in existence as of the owner's death if the owner's last will and testament is admitted to probate. Makes technical corrections. Repeals rules of trust construction that applied only to decedents dying in 2010.



A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-4.1-1-3.5 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2012]: **Sec. 3.5. "Entity" refers to a partnership, limited**
4 **partnership, limited liability partnership, association, corporation,**
5 **limited liability company, trust, or similar entity.**

6 SECTION 2. IC 6-4.1-2-8 IS ADDED TO THE INDIANA CODE
7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2012]: **Sec. 8. If a transferor makes a taxable transfer to an**
9 **entity, each individual with a beneficial (whether discretionary or**
10 **not) or ownership interest in the entity is considered a transferee.**
11 **Each transferee is liable for the same percentage of the taxes**
12 **imposed on the taxable transfer as that individual's percentage of**
13 **beneficial (whether discretionary or not) or ownership interest in**
14 **the entity.**

15 SECTION 3. IC 12-14-21-3 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. Notwithstanding any
17 other law, a claim filed for recovery of aged assistance has priority in
18 order of payment from the estate over all other claims, except the
19 following:

- 20 (1) Prior recorded encumbrances.
21 (2) Taxes.
22 (3) Reasonable costs of administration.
23 (4) **Reasonable** funeral expenses. ~~in an amount not to exceed five~~
24 ~~hundred fifty dollars (\$550).~~ **However, this amount is zero (0) if**
25 ~~the decedent has~~ **The court may consider the amount of funds**
26 **established for** prepaid funeral expenses that were excluded as
27 a resource for Medicaid eligibility under IC 12-15-2 **to determine**
28 **the amount of funeral expenses granted priority over the**
29 **claim under this section.**

30 SECTION 4. IC 12-15-9-0.5, AS AMENDED BY P.L.246-2005,
31 SECTION 107, IS AMENDED TO READ AS FOLLOWS



[EFFECTIVE JULY 1, 2012]: Sec. 0.5. (a) As used in this chapter, "estate" includes:

- (1) all real and personal property and other assets included within an individual's probate estate;
- (2) any interest in real property owned by the individual at the time of death that was conveyed to the individual's survivor through joint tenancy with right of survivorship, if the joint tenancy was created after June 30, 2002;
- (3) any real or personal property conveyed through a nonprobate transfer; and
- (4) any sum due after June 30, 2005, to a person after the death of a Medicaid recipient that is under the terms of an annuity contract purchased after May 1, 2005, with the assets of

~~(A) the Medicaid recipient. or~~

~~(B) the Medicaid recipient's spouse.~~

(b) As used in this chapter, "nonprobate transfer" means a valid transfer, effective at death, by a transferor:

- (1) whose last domicile was in Indiana; and
- (2) who immediately before death had the power, acting alone, to prevent transfer of the property by revocation or withdrawal and:
 - (A) use the property for the benefit of the transferor; or
 - (B) apply the property to discharge claims against the transferor's probate estate.

The term does not include transfer of a survivorship interest in a tenancy by the entireties real estate or payment of the death proceeds of a life insurance policy.

SECTION 5. IC 12-15-9-1, AS AMENDED BY P.L.246-2005, SECTION 108, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. ~~(a) Subject to subsection (b);~~ Upon the death of a Medicaid recipient, ~~or upon the death of a deceased Medicaid recipient's spouse;~~ the total amount of Medicaid paid on behalf of the recipient after the recipient became fifty-five (55) years of age must be allowed as a preferred claim against the estate of the recipient ~~or the recipient's spouse~~ in favor of the state. The affidavit of a person designated by the secretary to administer this section is evidence of the amount of the claim and is payable after the payment of the following in accordance with IC 29-1-14-9:

(1) The expenses of administering the estate, including the attorney's fees approved by the court and all taxes, interest, and penalties imposed by one (1) or more of the following:

(A) The federal government.

(B) A state.

(C) A political subdivision (as defined in IC 36-1-2-13).

~~(+)~~ **(2) Reasonable funeral expenses for the recipient. and the recipient's spouse; not to exceed in each individual case three hundred fifty dollars (\$350).**



(2) (3) The expenses of the last illness of the recipient ~~and the recipient's spouse~~ that are authorized or paid by the office.

(3) The expenses of administering the estate, including the attorney's fees approved by the court.

(b) If a recipient's spouse remarries, the part of the estate of the recipient's spouse that is attributable to the subsequent spouse is not subject to a claim for Medicaid paid on behalf of the recipient.

SECTION 6. IC 12-15-9-5, AS AMENDED BY P.L.246-2005, SECTION 109, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. (a) The office may not ~~recover on a claim filed~~ **file a claim** against the estate of a **recipient's** surviving spouse. ~~while the individual is survived by a child who is:~~

(1) ~~less than twenty-one (21) years of age; or~~

(2) ~~permanently and totally disabled under criteria established by the federal Supplemental Security Income program.~~

(b) ~~The office may not recover on a claim filed against the estate of a surviving spouse from any part of the estate described in section 1(b) of this chapter.~~

SECTION 7. IC 29-1-6-1, AS AMENDED BY P.L.36-2011, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. In the absence of a contrary intent appearing in the will, wills shall be construed as to real and personal estate in accordance with the rules in this section.

(a) Any estate, right, or interest in land or other things acquired by the testator after the making of the testator's will shall pass as if title was vested in the testator at the time of making of the will.

(b) All devises of real estate shall pass the whole estate of the testator in the premises devised, although there are no words of inheritance or of perpetuity, whether or not at the time of the execution of the will the decedent was the owner of that particular interest in the real estate devised. Such devise shall also pass any interest which the testator may have at the time of the testator's death as vendor under a contract for the sale of such real estate.

(c) A devise of real or personal estate, whether directly or in trust, to the testator's or another designated person's "heirs", "next of kin", "relatives", or "family", or to "the persons thereunto entitled under the intestate laws" or to persons described by words of similar import, shall mean those persons (including the spouse) who would take under the intestate laws if the testator or other designated person were to die intestate at the time when such class is to be ascertained, domiciled in this state, and owning the estate so devised. With respect to a devise which does not take effect at the testator's death, the time when such class is to be ascertained shall be the time when the devise is to take effect in enjoyment.

(d) In construing a will making a devise to a person or persons described by relationship to the testator or to another, any person



1 adopted prior to the person's twenty-first birthday before the death of
 2 the testator shall be considered the child of the adopting parent or
 3 parents and not the child of the natural or previous adopting parents.
 4 However, if a natural parent or previous adopting parent marries the
 5 adopting parent before the testator's death, the adopted person shall
 6 also be considered the child of such natural or previous adopting
 7 parent. Any person adopted after the person's twenty-first birthday by
 8 the testator shall be considered the child of the testator, but no other
 9 person shall be entitled to establish relationship to the testator through
 10 such child.

11 (e) In construing a will making a devise to a person described by
 12 relationship to the testator or to another, a person born out of wedlock
 13 shall be considered the child of the child's mother, and also of the
 14 child's father, if, but only if, the child's right to inherit from the child's
 15 father is, or has been, established in the manner provided in
 16 IC 29-1-2-7.

17 (f) A will shall not operate as the exercise of a power of
 18 appointment which the testator may have with respect to any real or
 19 personal estate, unless by its terms the will specifically indicates that
 20 the testator intended to exercise the power.

21 (g) If a devise of real or personal property, not included in the
 22 residuary clause of the will, is void, is revoked, or lapses, it shall
 23 become a part of the residue, and shall pass to the residuary devisee.
 24 Whenever any estate, real or personal, shall be devised to any
 25 descendant of the testator, and such devisee shall die during the
 26 lifetime of the testator, whether before or after the execution of the will,
 27 leaving a descendant who shall survive such testator, such devise shall
 28 not lapse, but the property so devised shall vest in the surviving
 29 descendant of the devisee as if such devisee had survived the testator
 30 and died intestate. The word "descendant", as used in this section,
 31 includes children adopted during minority by the testator and by the
 32 testator's descendants and includes descendants of such adopted
 33 children. "Descendant" also includes children of the mother who are
 34 born out of wedlock, and children of the father who are born out of
 35 wedlock, if, but only if, such child's right to inherit from such father is,
 36 or has been, established in the manner provided in IC 29-1-2-7. This
 37 rule applies where the parent is a descendant of the testator as well as
 38 where the parent is the testator. Descendants of such children shall also
 39 be included.

40 (h) Except as provided in subsection (m), if a testator in the
 41 testator's will refers to a writing of any kind, such writing, whether
 42 subsequently amended or revoked, as it existed at the time of execution
 43 of the will, shall be given the same effect as if set forth at length in the
 44 will, if such writing is clearly identified in the will and is in existence
 45 both at the time of the execution of the will and at the testator's death.

46 (i) If a testator devises real or personal property upon such terms



1 that the testator's intentions with respect to such devise can be
 2 determined at the testator's death only by reference to a fact or an event
 3 independent of the will, such devise shall be valid and effective if the
 4 testator's intention can be clearly ascertained by taking into
 5 consideration such fact or event even though occurring after the
 6 execution of the will.

7 (j) If a testator devises or bequeaths property to be added to a trust
 8 or trust fund which is clearly identified in the testator's will and which
 9 trust is in existence at the time of the death of the testator, such devise
 10 or bequest shall be valid and effective. Unless the will provides
 11 otherwise, the property so devised or bequeathed shall be subject to the
 12 terms and provisions of the instrument or instruments creating or
 13 governing the trust or trust fund, including any amendments or
 14 modifications in writing made at any time before or after the execution
 15 of the will and before or after the death of the testator.

16 (k) If a testator devises securities in a will and the testator then
 17 owned securities that meet the description in the will, the devise
 18 includes additional securities owned by the testator at death to the
 19 extent the additional securities were acquired by the testator after the
 20 will was executed as a result of the testator's ownership of the
 21 described securities and are securities of any of the following types:

- 22 (1) Securities of the same organization acquired because of an
 23 action initiated by the organization or any successor, related, or
 24 acquiring organization, excluding any security acquired by
 25 exercise of purchase options.
- 26 (2) Securities of another organization acquired as a result of a
 27 merger, consolidation, reorganization, or other distribution by the
 28 organization or any successor, related, or acquiring organization.
- 29 (3) Securities of the same organization acquired as a result of a
 30 plan of reinvestment.

31 Distributions in cash before death with respect to a described security
 32 are not part of the devise.

33 (l) For purposes of this subsection, "incapacitated principal" means
 34 a principal who is an incapacitated person. An adjudication of
 35 incapacity before death is not necessary. The acts of an agent within the
 36 authority of a durable power of attorney are presumed to be for an
 37 incapacitated principal. If:

- 38 (1) specifically devised property is sold or mortgaged by; or
- 39 (2) a condemnation award, insurance proceeds, or recovery for
 40 injury to specifically devised property are paid to;

41 a guardian or an agent acting within the authority of a durable power
 42 of attorney for an incapacitated principal, the specific devisee has the
 43 right to a general pecuniary devise equal to the net sale price, the
 44 amount of the unpaid loan, the condemnation award, the insurance
 45 proceeds, or the recovery.

46 (m) A written statement or list that:



(1) complies with this subsection; and
 (2) is referred to in a will;
 may be used to dispose of items of tangible personal property, other than property used in a trade or business, not otherwise specifically disposed of by the will. To be admissible under this subsection as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the beneficiaries with reasonable certainty. The writing may be prepared before or after the execution of the will. The writing may be altered by the testator after the writing is prepared. The writing may have no significance apart from the writing's effect on the dispositions made by the will. If more than one (1) otherwise effective writing exists, then, to the extent of a conflict among the writings, the provisions of the most recent writing revoke the inconsistent provisions of each earlier writing.

(n) ~~A will of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to:~~

- ~~(1) the unified credit;~~
- ~~(2) the estate tax exemption;~~
- ~~(3) the applicable credit amount;~~
- ~~(4) the applicable exclusion amount;~~
- ~~(5) the generation-skipping transfer tax exemption;~~
- ~~(6) the GST exemption;~~
- ~~(7) the marital deduction;~~
- ~~(8) the maximum marital deduction;~~
- ~~(9) the unlimited marital deduction;~~
- ~~(10) the inclusion ratio;~~
- ~~(11) the applicable fraction;~~
- ~~(12) any section of the Internal Revenue Code:~~

~~(A) relating to the:~~

- ~~(i) federal estate tax; or~~
- ~~(ii) generation-skipping transfer tax; and~~
- ~~(B) that measures a share of:~~

- ~~(i) an estate; or~~
- ~~(ii) a trust;~~

~~based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer tax law; or~~

- ~~(13) a provision of federal estate tax or generation-skipping transfer tax law that is similar to subdivisions (1) through (12);~~

~~refers to the federal estate tax and generation-skipping transfer tax laws as they applied with respect to estates of decedents on December 31, 2009.~~

(o) Subsection (n) does not apply to a will:

- ~~(1) that is executed or amended after December 31, 2009; or~~
- ~~(2) that manifests an intent that a contrary rule apply if the decedent dies on a date on which there is no then applicable~~



federal estate or generation-skipping transfer tax.

(p) If the federal estate or generation-skipping transfer tax becomes effective before January 1, 2011, the reference to January 1, 2011, in subsection (n) shall refer instead to the first date on which the tax becomes legally effective.

(q) Within three (3) months following the latest to occur of the:

(1) decedent's death;

(2) fiduciary's appointment; or

(3) enactment of this subsection;

the personal representative under a will to which subsection (n) applies shall give written notice to the affected beneficiary of the right to commence a proceeding under subsection (r) and to the present income beneficiary of any trust created under the will of the existence of this section and the beneficiary's right to commence a proceeding under subsection (r).

(r) The personal representative or an affected beneficiary under a will described in subsection (n) may initiate a proceeding to determine whether the decedent intended that a formula described in subsection (n) be construed with respect to the law as it existed after December 31, 2009. A proceeding under this subsection must be commenced within nine (9) months after the death of the testator or grantor.

SECTION 8. IC 29-1-7-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 25. (a) Any will that has been proved or allowed in any other state or in any foreign country, according to the laws of that state or country, may be received and recorded in this state: within three (3) years after the decedent's death

(1) before the deadlines imposed by section 15.1(d) of this chapter, unless the will is probated for a purpose described in section 15.1(e) of this chapter; and

(2) in the manner and for the purpose stated in sections 26 and 27 of this chapter.

(b) A foreign will received and recorded for a purpose described in section 15.1(e) may not be admitted to probate for any other purpose and is subject to all rules governing the admission of wills to probate.

SECTION 9. IC 29-1-14-9, AS AMENDED BY P.L.161-2007, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. (a) All claims shall be classified in one (1) of the following classes. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) Costs and expenses of administration.

(2) Reasonable funeral expenses. However, in any estate in which the decedent was a recipient of public assistance under IC 12-1-1 through IC 12-1-12 (before its repeal) or any of the following, the amount of funeral expenses having priority over any claim for the



recovery of public assistance shall not exceed the limitations provided for under IC 12-14-6, IC 12-14-17, and IC 12-14-21:

TANF assistance:

TANF burials:

TANF IMPACT/J.O.B.S:

Temporary Assistance to Other Needy Families (TAONF) assistance:

ARCH:

Blind relief:

Child care:

Child welfare adoption assistance:

Child welfare adoption opportunities:

Child welfare assistance:

Child welfare child care improvement:

Child welfare child abuse:

Child welfare child abuse and neglect prevention:

Child welfare children's victim advocacy program:

Child welfare foster care assistance:

Child welfare independent living:

Child welfare medical assistance to wards:

Child welfare program review action group (PRAG):

Child welfare special needs adoption:

Food Stamp administration:

Health care for indigent (HCI):

ICES:

IMPACT (food stamps):

Title IV-D (ICETS):

Title IV-D child support administration:

Title IV-D child support enforcement (parent locator):

Medicaid assistance:

Medical services for inmates and patients (590):

Room and board assistance (RBA):

Refugee social service:

Refugee resettlement:

Repatriated citizens:

SSI burials and disabled examinations:

Title XIX certification:

(3) Allowances made under IC 29-1-4-1.

(4) All debts and taxes having preference under the laws of the United States.

(5) Reasonable and necessary medical expenses of the last sickness of the decedent, including compensation of persons attending ~~him~~: **the decedent**.

(6) All debts and taxes having preference under the laws of this state; but no personal representative shall be required to pay any taxes on any property of the decedent unless such taxes are due



and payable before possession thereof is delivered by the personal representative pursuant to the provisions of IC 29-1.

(7) All other claims allowed.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, nor shall a claim due and payable be entitled to a preference over claims not due.

(c) For purposes of subsection (a), costs and expenses of administration include the fee of a surrogate attorney that has been:

(1) approved by a court under the rules of the Indiana Supreme Court governing surrogate attorneys; and

(2) filed as a claim in the estate of a deceased attorney.

SECTION 10. IC 29-3-3-7, AS ADDED BY P.L.178-2011, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7. (a) Subject to subsection (e), a parent of a minor or the guardian of a protected person may designate a standby guardian by making a written declaration naming the individual designated to serve as a standby guardian. A declarant may name an alternate to the designated standby guardian if the designated standby guardian is unable to serve, refuses to serve, renounces the appointment, dies, or becomes incapacitated after the death of the declarant.

(b) A declaration under this section must contain the following information:

(1) The names of the declarant, the designated standby guardian, and the alternate standby guardian, if any.

(2) The following information concerning each minor child or protected person for whom a standby guardian is designated by the declaration:

(A) The person's full name as it appears on the birth certificate or as ordered by a court.

(B) The person's date of birth.

~~(C) The person's Social Security number, if any.~~

(3) A statement that the declaration becomes effective upon the death or incapacity of the declarant.

(4) A statement that the declaration terminates ninety (90) days after becoming effective unless the standby guardian files a petition for a guardianship of the minor or protected person during that ninety (90) day period.

(c) A declaration executed under this section must be signed by the declarant in the presence of a notary public.

(d) A declaration executed under this section becomes effective upon the death or incapacity (as defined in IC 29-3-1-7.5) of the parent or guardian and terminates ninety (90) days after the declaration becomes effective. However, if the designated standby guardian files a petition for a guardianship of the minor or protected person during



that ninety (90) day period, the declaration remains in effect until the court rules on the petition.

(e) A declaration executed under this section must be considered by, but is not binding upon, the department of child services, a probation department, or a juvenile court for purposes of determining the placement of a child who is the subject of:

- (1) an allegation of child abuse or neglect under IC 31-33;
- (2) an open child in need of services case under IC 31-34; or
- (3) an open delinquency case under IC 31-37.

(f) A standby guardian shall have all the powers granted to a guardian under this article.

SECTION 11. IC 30-4-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. ~~(Application of the Article with Respect to Pre-Existing Trusts)~~ (a) Except as provided elsewhere in this article, the rules of law contained in this article shall apply to all trusts created prior to September 2, 1971, unless to do so would:

- (1) adversely affect a right given to any beneficiary;
- (2) give a right to any beneficiary which ~~he~~ **the beneficiary** was not intended to have when the trust was created;
- (3) impose a duty or liability on any person which was not intended to be imposed when the trust was created; or
- (4) relieve any person from any duty or liability imposed by the terms of the trust or under prior law.

(b) Except as provided elsewhere in this article, an amendment to the rules of law contained in this article applies to all trusts created prior to the effective date of the applicable amendment unless to do so would:

- (1) adversely affect a right given to any beneficiary;**
- (2) give a right to any beneficiary which the beneficiary was not intended to have when the trust was created;**
- (3) impose a duty or liability on any person which was not intended to be imposed when the trust was created; or**
- (4) relieve any person from any duty or liability imposed by the terms of the trust or under prior law.**

SECTION 12. IC 30-4-2.1-13 IS REPEALED [EFFECTIVE JULY 1, 2012]. Sec. ~~13~~: (a) A trust of a decedent who dies after December 31, 2009; and before January 1, 2011; that contains a formula referring to:

- ~~(1) the unified credit;~~
- ~~(2) the estate tax exemption;~~
- ~~(3) the applicable credit amount;~~
- ~~(4) the applicable exclusion amount;~~
- ~~(5) the generation-skipping transfer tax exemption;~~
- ~~(6) the GST exemption;~~
- ~~(7) the marital deduction;~~
- ~~(8) the maximum marital deduction;~~



- (9) the unlimited marital deduction;
- (10) the inclusion ratio;
- (11) the applicable fraction;
- (12) any section of the Internal Revenue Code:

- (A) relating to the:

- (i) federal estate tax; or
- (ii) generation-skipping transfer tax; and

- (B) that measures a share of trust;

based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer tax law; or

(13) a provision of federal estate tax or generation-skipping transfer tax law that is similar to subdivisions (1) through (12);

refers to the federal estate tax and generation-skipping transfer tax laws as they applied with respect to estates of decedents on December 31, 2009.

(b) Subsection (a) does not apply to a trust:

- (1) that is executed or amended after December 31, 2009; or

- (2) that manifests an intent that a contrary rule apply if the decedent dies on a date on which there is no then applicable federal estate or generation-skipping transfer tax.

(c) If the federal estate or generation-skipping transfer tax becomes effective before January 1, 2011, the reference to January 1, 2011, in subsection (a) shall refer instead to the first date on which the tax becomes legally effective.

(d) Within three (3) months following the latest to occur of the:

- (1) decedent's death;

- (2) trustee's appointment; or

- (3) enactment of this subsection;

the trustee of a trust to which subsection (a) applies shall give written notice regarding the beneficiary's right to commence a proceeding under subsection (c) to any beneficiary having a right to trust income or principal under subsection (a); of the existence of this statute; and of the beneficiary's right to commence a proceeding under subsection (c).

(e) The trustee of any beneficiary under the trust having a present right to income or principal of the trust may initiate a proceeding to determine whether the decedent intended that a formula described in subsection (a) be construed with respect to the law as it existed after December 31, 2009. A proceeding under this subsection must be commenced within nine (9) months after the death of the settlor.

SECTION 13. IC 32-17-14-2.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.1. An amendment to the rules of law contained in this chapter applies to all transfer on death transfers created prior to the effective date of the applicable amendment.**



1 SECTION 14. IC 32-17-14-21, AS ADDED BY P.L.143-2009,
 2 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 UPON PASSAGE]: Sec. 21. (a) A trustee of a trust may be a
 4 designated beneficiary regardless of whether the trust is amendable,
 5 revocable, irrevocable, funded, unfunded, or amended after the
 6 designation is made.

7 (b) Unless a beneficiary designation provides otherwise, a trust that
 8 is revoked or terminated before the death of the owner is considered
 9 nonexistent at the owner's death.

10 (c) Unless a beneficiary designation provides otherwise, a legal
 11 entity or trust that does not:

12 (1) exist; or

13 (2) come into existence effective as of the owner's death;
 14 is considered nonexistent at the owner's death.

15 **(d) For purposes of this section, an owner's testamentary trust**
 16 **is considered to have come into existence as of the owner's death if**
 17 **the owner's last will and testament is admitted to probate.**

18 SECTION 15. IC 32-17-14-27, AS ADDED BY P.L.143-2009,
 19 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 UPON PASSAGE]: Sec. 27. (a) An owner who makes arrangements for
 21 a transfer on death transfer under this chapter gives to the transferring
 22 entity the protections provided in this section for executing the owner's
 23 beneficiary designation.

24 (b) A transferring entity may execute a transfer on death transfer
 25 with or without a written request for execution.

26 (c) A transferring entity may rely and act on:

27 (1) a certified or authenticated copy of a death certificate issued
 28 by an official or an agency of the place where the death occurred
 29 as showing the fact, place, date, and time of death and the identity
 30 of the decedent; and

31 (2) a certified or authenticated copy of a report or record of any
 32 governmental agency that a person is missing, detained, dead, or
 33 alive, and the dates, circumstances, and places disclosed by the
 34 record or report.

35 (d) A transferring entity has no duty to verify the information
 36 contained within a written request for the execution of a beneficiary
 37 designation. The transferring entity may rely and act on a request made
 38 by a beneficiary or a beneficiary's attorney in fact, guardian,
 39 conservator, or other agent.

40 (e) A transferring entity has no duty to:

41 (1) except as provided in subsection (g), give notice to any person
 42 of the date, manner, and persons to whom a transfer will be made
 43 under beneficiary designation;

44 (2) attempt to locate any beneficiary or lineal descendant
 45 substitute;

46 (3) determine whether a nonsurviving beneficiary or descendant



1 had a lineal descendant who survived the owner;

2 (4) locate a trustee or custodian;

3 (5) obtain the appointment of a successor trustee or custodian;

4 (6) discover the existence of a trust instrument or will that creates
5 an express trust; or

6 (7) determine any fact or law that would:

7 (A) cause the beneficiary designation to be revoked in whole
8 or in part as to any person because of a change in marital
9 status or other reason; or

10 (B) cause a variation in the distribution provided in the
11 beneficiary designation.

12 (f) A transferring entity has no duty to withhold making a transfer
13 based on knowledge of any fact or claim adverse to the transfer to be
14 made unless before making the transfer the transferring entity receives
15 a written notice that:

16 (1) in manner, place, and time affords a reasonable opportunity to
17 act on the notice before making the transfer; and

18 (2) does the following:

19 (A) Asserts a claim of beneficial interest in the transfer
20 adverse to the transfer to be made.

21 (B) Gives the name of the claimant and an address for
22 communications directed to the claimant.

23 (C) Identifies the deceased owner.

24 (D) States the nature of the claim as it affects the transfer.

25 (g) If a transferring entity receives a timely notice meeting the
26 requirements of subsection (f), the transferring entity may discharge
27 any duty to the claimant by sending a notice by certified mail to the
28 claimant at the address provided by the claimant's notice of claim. The
29 notice must advise the claimant that a transfer **adverse** to the claimant's
30 asserted claim will be made at least forty-five (45) days after the date
31 of the mailing unless the transfer is restrained by a court order. If the
32 transferring entity mails the notice described by this subsection to the
33 claimant, the transferring entity shall withhold making the transfer for
34 at least forty-five (45) days after the date of the mailing. Unless the
35 transfer is restrained by court order, the transferring entity may make
36 the transfer at least forty-five (45) days after the date of the mailing.

37 (h) Neither notice that does not comply with the requirements of
38 subsection (f) nor any other information shown to have been available
39 to a transferring entity, its transfer agent, or its employees affects the
40 transferring entity's right to the protections provided by this chapter.

41 (i) A transferring entity is not responsible for the application or use
42 of property transferred to a fiduciary entitled to receive the property.

43 (j) Notwithstanding the protections provided a transferring entity by
44 this chapter, a transferring entity may require parties engaged in a
45 dispute over the propriety of a transfer to:

46 (1) adjudicate their respective rights; or



- 1 (2) furnish an indemnity bond protecting the transferring entity.
2 (k) A transfer by a transferring entity made in accordance with this
3 chapter and under the beneficiary designation in good faith and
4 reliance on information the transferring entity reasonably believes to be
5 accurate discharges the transferring entity from all claims for the
6 amounts paid and the property transferred.
7 (l) All protections provided by this chapter to a transferring entity
8 are in addition to the protections provided by any other applicable
9 Indiana law.
10 **SECTION 16. An emergency is declared for this act.**

